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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

B6

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: DEC 30 2004

WAC 98 171 51698

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Mari Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, initially approved the employment-based immigrant visa petition. Upon further review, the director determined that the petition had been approved in error. The director properly served the petitioner with a notice of intent to revoke, and subsequently revoked the approval of the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a church. It seeks to classify the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), to perform services as a director of religious music and assistant pastor. The director determined that the petitioner had not established that: (1) the beneficiary entered the United States with the intention of performing religious work; (2) the beneficiary had the requisite two years of continuous work experience in the occupation immediately preceding the filing date of the petition; (3) the position requires a bachelor's degree; or (4) the position qualifies as a religious occupation relating to a traditional religious function.

On appeal, the petitioner provides a brief statement, and copies of documents, most of them previously submitted.

Section 205 of the Act, 8 U.S.C. § 1155, states: "The Attorney General may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204."

Regarding the revocation on notice of an immigrant petition under section 205 of the Act, the Board of Immigration Appeals has stated:

> In *Matter of Estime*, . . . this Board stated that a notice of intention to revoke a visa petition is properly issued for "good and sufficient cause" where the evidence of record at the time the notice is issued, if unexplained and unrebutted, would warrant a denial of the visa petition based upon the petitioner's failure to meet his burden of proof. The decision to revoke will be sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.

Matter of Ho, 19 I&N Dec. 582, 590 (BIA 1988) (citing *Matter of Estime*, 19 I&N 450 (BIA 1987)).

By itself, the director's realization that a petition was incorrectly approved is good and sufficient cause for the issuance of a notice of intent to revoke an immigrant petition. *Matter of Ho*. The approval of a visa petition vests no rights in the beneficiary of the petition, as approval of a visa petition is but a preliminary step in the visa application process. The beneficiary is not, by mere approval of the petition, entitled to an immigrant visa. *Id.* at 582.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C), which pertains to an immigrant who:

> (i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;
>
> (ii) seeks to enter the United States--

(I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,

(II) before October 1, 2008, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or

(III) before October 1, 2008, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Revenue Code of 1986) at the request of the organization in a religious vocation or occupation; and

(iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

In a letter submitted with the petition, [redacted] offered the beneficiary "the full-time paying position of Director of Religious Music at our Church and the position as an Assistant Pastor offering spiritual counseling to members of our congregation."

The first issue raised in the director's decision concerns the beneficiary's entry into the United States. Section 101(a)(27)(C)(ii)(III) of the Act, 8 U.S.C. § 1101(a)(27)(C)(ii)(III), requires that the alien seeking classification "seeks to enter the United States" for the purpose of carrying on a religious vocation or religious occupation. In this instance, the beneficiary entered the United States under a B-2 visitor's visa, later changing status to an F-2 spouse of a nonimmigrant student. Thus, the director concluded, the beneficiary did not enter the United States for the purpose of performing religious work.

This finding is not defensible. The AAO interprets the language of the statute, when it refers to "entry" into the United States, to refer to the alien's intended *future* entry *as an immigrant*, either by crossing the border with an immigrant visa, or by adjusting status within the United States. This is consistent with the phrase "*seeks* to enter," which describes the entry as a future act. We therefore withdraw this particular finding by the director.

The next issue relates to the issue of the beneficiary's past experience. The regulation at 8 C.F.R. § 204.5(m)(1) indicates that the "religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two-year period immediately preceding the filing of the petition." 8 C.F.R. § 204.5(m)(3)(ii)(A) requires the petitioner to demonstrate that, immediately prior to the filing of the petition, the alien has the required two years of membership in the denomination and the required two years of experience in the religious vocation, professional religious work, or other religious work. The petition was filed on June 2, 1998. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of the position offered throughout the two years immediately prior to that date. The beneficiary first entered the United States on September 13, 1996, and therefore she was outside the United States for part of the qualifying period.

[redacted] states that the beneficiary "has been an Assistant Pastor at our Church since October of 1996 as well as being our Choir Director over this period. Because she has an F-2 visa, she has been unable to work for pay. Nevertheless, she has volunteered her services to our Church." Prior to the beneficiary's arrival in the United States, the beneficiary was the church pianist a[redacted] Tae Jeon City, Korea from January 1994 to August 1996, as confirmed b[redacted] states that the beneficiary's "main duty was religious musical arrangements and directing and piano playing," but the beneficiary "is also a good spiritual counselor." A certificate that Song Chon Presbyterian Church issued in

1998 identifies the beneficiary as a "deacon." The documents from the church in Korea do not specify whether or not the beneficiary received compensation for her services.

Following the approval of the visa petition, the beneficiary applied for adjustment of status on June 27, 2000. With her adjustment application, the beneficiary submitted Form G-325A, Biographic Information, dated May 15, 2000. This form instructed the beneficiary to list her employment over the past five years (i.e., mid-1995 to mid-2000), and her "last occupation abroad," if not covered by the preceding five-year period. The beneficiary did not mention any religious work, stating only that she has been a "House Wife" for the preceding five years (which includes the beneficiary's last year in Korea). The "last occupation abroad" section remains blank. This implies that, as of May 2000, the beneficiary had *never* held a paid position as a religious worker, even in her native Korea, where employment authorization would presumably not have been an issue.

In a later submission, [redacted] senior pastor of the petitioning church, indicates that the beneficiary worked as a volunteer until October 2000, at which time the beneficiary began receiving a salary of $1,650 per month, which is $19,800 per year. Tax documents confirm these payments. On their 2000 joint income tax return, the beneficiary and her spouse reported $3,300 in income from the petitioning church, and $47 in net income from a billiard room operated by the beneficiary's spouse. The tax return shows the beneficiary's occupation as "homemaker."

On July 31, 2003, the director issued a notice of intent to revoke. The director stated "volunteer activities do not constitute qualifying work experience in [a] religious occupation," and therefore the beneficiary's unpaid work in Korea and for the petitioner cannot qualify her for status as a special immigrant religious worker.

In response, counsel and [redacted] in a joint letter, assert that the petitioner has obtained further evidence of the beneficiary's past experience, and that the "House Wife" reference on the beneficiary's Form G-325A "was a clerical error on the part of the person who typed the form." This explanation fails to account for the "homemaker" reference on the beneficiary's tax return, prepared long after the Form G-325A. It remains that the beneficiary signed the Form G-325A, thereby endorsing its contents under penalty of perjury, whether or not she personally typed them. The petitioner does not explain why the beneficiary would sign such a document, knowing that it contained false or incomplete information. The petitioner does not identify "the person who typed the form," and that unnamed individual provides no statement acknowledging his or her error. Thus, there is no corroboration for the claim that the "House Wife" reference on the Form G-325A resulted from a "clerical error." Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho.*

In a separate statement, [redacted] asserts that the beneficiary worked 30 hours a week for the petitioning church, beginning in October 1996, and that the beneficiary was unpaid only because she lacked employment authorization. The petitioner submits a copy of a "Certificate of Appointment," indicating that the beneficiary "is hereby appointed an accompanist of this church" on October 6, 1996. A second certificate names the beneficiary as the church's "organist" as of January 5, 1997. The distinction between an accompanist and an organist is not explained. A third certificate, dated January 4, 1998, refers to the beneficiary as an "accompanist" once again. It appears, from the dates on the certificates, that the appointment is undertaken on an annual basis at the start of the new calendar year. None of the certificates indicate that the appointment

pertains to what is normally a paid position. The "Pledges of Appointee" executed by the beneficiary on January 14, 1998, includes a pledge to "pay tithe to the church out of all my earnings."

The petitioner submits copies of various church documents, mostly dating from after the petition's filing date, that refer to the beneficiary as an accompanist or organist. Some of these documents appear to refer to other accompanists as well. For instance, page 13 of the church's 1999-2000 annual report appears to identify the beneficiary as one of six accompanists, although the petitioner has translated only the beneficiary's name and the word "accompanists." There is no indication as to how many, if any, of these accompanists were paid at the time. Experience in a church activity that is routinely or typically delegated to unpaid volunteers is not qualifying experience in a religious occupation.

A new letter from [redacted] repeats the assertion that the beneficiary "worked at [redacted] Presbyterian Church as an accompanist from Jan. 2, 1994 to Sept. 12, 1996." This letter, like the previous one from the same source, is silent as to whether or not the beneficiary received any compensation for her work in Korea. An earlier letter from [redacted] dated January 2, 1994, states "I appoint this person as a piano accompanist for this church," but, again, does not refer to salary or other terms of employment, nor does the letter mention employment in any way.

Tax documents from 2002 show that the petitioner paid the beneficiary $19,800 that year, and the beneficiary identified herself as a "church worker" on her 2002 tax return. The petitioner asserts that this documentation establishes that the petitioner has intended to pay the beneficiary all along.

In revoking the approval of the petition, the director stated, because the job offer must involve paid, full-time employment, the beneficiary's past experience must also be in the form of paid, full-time employment.

On appeal, [redacted] maintains that the beneficiary's volunteer work "should constitute qualifying work experience." The director's finding that unpaid volunteer work cannot constitute qualifying experience appears to overreach; there may be limited circumstances in which unpaid volunteer work may constitute qualifying experience. That being said, the burden of proof remains on the petitioner to establish that the claimed work took place continuously.

[redacted] asserts, on appeal, that the beneficiary's "work was on a full time basis," but he does not reconcile this with his previous assertion that the beneficiary's volunteer work occupied 30 hours per week, below than the 35-40 hour "full-time" threshold specified by the director. This represents an additional impediment to a finding that the beneficiary worked *continuously* in the capacity claimed.

Also of concern is that, between September 12 and October 6, 1996, the beneficiary apparently had no position at any church. There is no indication that she was on vacation or leave during that nearly month-long period; rather, she had permanently left her former position in Korea and had not yet undertaken any duties at the petitioning church.

The record remains silent as to how the beneficiary supported herself during the qualifying period. During much of that time, her spouse was an F-1 student, for whom employment authorization is highly restricted. The beneficiary's earliest reported income was in 2000, when she reported $3,300 in wages that she received during the last two months of the year. Especially when viewed in conjunction with other gaps and discrepancies in the record, the absence of evidence of support is a significant matter.

The next two issues relate to the question of whether the petitioner seeks to employ the beneficiary in a qualifying occupation. The regulation at 8 C.F.R. § 204.5(m)(2) offers the following pertinent definitions:

> *Professional capacity* means an activity in a religious vocation or occupation for which the minimum of a United States baccalaureate degree or a foreign equivalent degree is required.
>
> *Religious occupation* means an activity which relates to a traditional religious function. Examples of individuals in religious occupations include, but are not limited to, liturgical workers, religious instructors, religious counselors, cantors, catechists, workers in religious hospitals or religious health care facilities, missionaries, religious translators, or religious broadcasters. This group does not include janitors, maintenance workers, clerks, fund raisers, or persons solely involved in the solicitation of donations.

The director determined that the beneficiary's position is not a professional religious occupation because it does not require a bachelor's degree. This finding, by itself, is not grounds for revocation, because the regulations plainly allow for eligibility based on religious occupations that do not require a bachelor's degree; such occupations simply do not merit the adjective "professional."

A related issue, however, merits further discussion. The director found that the beneficiary's position does not qualify as a religious occupation. While the director discusses this issue in the revocation notice, the director did not first apprise the petitioner of the issue in the notice of intent to revoke. If the revocation rested on no other grounds, this error would be grounds for remanding the matter for a new decision. Nevertheless, because we have affirmed one of the grounds first mentioned in the notice of intent to revoke, discussion of this issue will not change the outcome of our appellate decision.

To establish eligibility for special immigrant classification, the petitioner must establish that the specific position that it is offering qualifies as a religious occupation as defined in these proceedings. The regulation at 8 C.F.R. § 204.5(m)(2) reflects that nonqualifying positions are those whose duties are primarily administrative or secular in nature.

Citizenship and Immigration Services therefore interprets the term "traditional religious function" to require a demonstration that the duties of the position are directly related to the religious creed of the denomination, that the position is defined and recognized by the governing body of the denomination, and that the position is traditionally a permanent, full-time, salaried occupation within the denomination.

[redacted]lists the beneficiary's "duties as the Director of Religious Music and as an Assistant Pastor":

> Select appropriate religious hymnals and music to accompany each service;
> Prepare arrangements for special religious holidays such as Christmas, Easter and for special events;
> Prepare religious music texts for study by bible groups;
> Teach music to Sunday School pupils;
> Assume the position of lead pianist;
> Provide spiritual counseling to members of the congregation;
> Assist the Pastor at weddings, funerals and baptisms.

In the revocation notice, the director stated "[f]ields related to music . . . do not qualify as religious occupations, because the jobs are essentially secular rather than traditional religious functions. . . . [T]he

proffered duties can generally be performed by dedicated members of the congregation and do not require the full-time services of a religious worker." The petitioner, on appeal, states "religious music is an integral part of traditional religious functions," and therefore the position offered to the beneficiary "is a traditional religious occupation."

A typically unpaid activity is not an "occupation," even if it relates to a traditional religious function. For instance, few would dispute that an altar boy performs a traditional religious function for the Roman Catholic Church, but the position of altar boy is not a paid occupation. Rather, it is a function undertaken by young volunteers from the congregation. Also, every member of a church choir provides the music that is part of a typical church service. In many churches, the entire congregation is encouraged to join in the singing of hymns, but this plainly does not make each and every parishioner a religious worker.

As noted above, there is no evidence that any church, in the United States or in Korea, had ever paid the beneficiary for her work prior to the filing, and subsequent approval, of the immigrant visa petition. The record does not show that the petitioner's religious denomination traditionally considers organists, accompanists, or music directors to be paid employees rather than musically skilled volunteers from the congregation. As noted above, the petitioner's evidence appears to identify several church accompanists, with no indication that any of them were salaried employees during the qualifying period.

As late as 2001, when filing her income taxes for 2000, the beneficiary described herself as a "homemaker." This description is fully consistent with the "House Wife" designation on the Form G-325A, and thus it undermines the unsupported claim that the "House Wife" reference was a "clerical error." These repeated attestations by the beneficiary indicate that she herself viewed her church work as an activity rather than as a job or occupation.

The beneficiary's duties as an "assistant pastor" appear to be largely limited to the counseling of parishioners. This work appears to occupy only a small proportion of the beneficiary's work schedule, and therefore we cannot find that the beneficiary holds the religious occupation of a religious counselor.

The special immigrant religious worker classification is intended as a means for churches and other religious organizations to fill staffing vacancies with experienced workers. It is not merely a reward for devout parishioners who have donated their time and talent to their local houses of worship.

Beyond the grounds cited in the director's decision, we note another factor for which the record offers insufficient evidence to permit approval of the petition. 8 C.F.R. § 204.5(m)(3)(i) requires the petitioner to submit evidence that the organization qualifies as a non-profit organization in the form of either:

> (A) Documentation showing that it is exempt from taxation in accordance with section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations (in appropriate cases, evidence of the organization's assets and methods of operation and the organization's papers of incorporation under applicable state law may be requested); or
>
> (B) Such documentation as is required by the Internal Revenue Service to establish eligibility for exemption under section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations.

According to documentation from the Internal Revenue Service, the petitioner's tax-exempt status derives from classification not under section 170(b)(1)(A)(i) of the Internal Revenue Code of 1986 (the Code), which

pertains to churches, but rather under section 170(b)(1)(A)(vi) of the Code, which pertains to publicly-supported organizations as described in section 170(c)(2) of the Code, "organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes," or for other specified purposes. This section refers in part to religious organizations, but to many types of secular organization as well.

Designation under section 170(b)(1)(A)(vi) of the Code is not inherently disqualifying, but it does mean that additional documentation is necessary to establish that this exemption derives from the petitioner's religious character. The documentation necessary to establish this includes, at a minimum:

(1) A properly completed IRS Form 1023;
(2) A properly completed Schedule A supplement, if applicable;
(3) A copy of the organizing instrument of the organization that contains the appropriate dissolution clause required by the IRS and that specifies the purposes of the organization;
(4) Brochures, calendars, flyers and other literature describing the religious purpose and nature of the activities of the organization.

See Memorandum from William R. Yates, Associate Director of Operations, *Extension of the Special Immigrant Religious Worker Program and Clarification of Tax Exempt Status Requirements for Religious Organizations* (December 17, 2003). The record does not contain these documents. This is not to say that the petitioner is clearly not a church, but the fact that the Internal Revenue Service did not classify the petitioner as a "church" raises questions that the record does not answer.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.